

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE VACANCY	)	CASE NO.
ON THE BOARD OF COMMISSIONERS OF	)	2015-00305
ADAIR COUNTY WATER DISTRICT	)	

ORDER

By letter dated August 14, 2015, Michael Lee Stephens, county judge/executive of Adair County, Kentucky, advised the Commission that prior to his election as county judge/executive, there was a vacancy on the Board of Commissioners of Adair County Water District ("Adair County District") resulting from the expiration of a commissioner's term, and that the vacancy was not filled within 90 days of the expiration of the term. According to the County Judge/Executive, the term of the commissioner ended on August 1, 2014, and the members of the Adair County Fiscal Court did not vote to approve the appointment of a candidate to fill the vacancy until December 9, 2014.

By Order entered September 28, 2015, the Commission established this case to determine whether a vacancy exists on the Adair County District's Board of Commissioners. The evidence of record shows that such a vacancy does exist. The Adair County Fiscal Court minutes show that Rudy Higgenbotham was appointed to the Adair County District Board of Commissioners on August 10, 2010. The Adair County Fiscal Court minutes further show that on December 9, 2014, the Adair County Fiscal Court approved Larry Bryant to replace Rudy Higgenbotham on the Adair County District Board of Commissioners.

Pursuant to KRS 74.020(1), Mr. Higgenbotham's term expired on August 10, 2014. As the vacancy created by the expiration of Mr. Higgenbotham's term had not been filled by November 8, 2014, the statutory duty and the exclusive authority to fill the vacancy shifted from the Adair County Judge/Executive and Adair County Fiscal Court to the Commission. KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

While the Adair County Judge/Executive and Adair County Fiscal Court may reach agreement on a candidate for the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their part to appoint and approve a candidate after that time constitutes only a recommendation to the Commission.<sup>1</sup>

Accordingly, having declared a vacancy, the Commission finds that further proceedings are necessary to determine who should be appointed to fill the vacancy of the expired term on the Adair County District Board of Commissioners. To ensure a wide range of candidates are considered, the Commission will permit all interested parties the opportunity to nominate candidates for the position and then will determine

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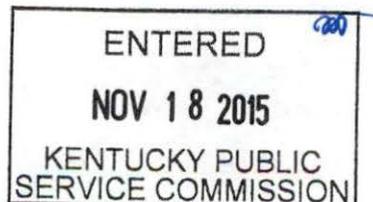
<sup>1</sup> See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009) at 4-5.

whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates who meet these requirements, which is best suited to sit on the Board of Commissioners. We will further direct that a copy of this Order be served upon the Adair County Judge/Executive, the Adair County Fiscal Court, the Adair County Attorney, and Adair County District's Board of Commissioners to notify them of this proceeding.

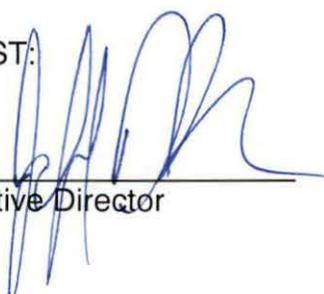
IT IS THEREFORE ORDERED that:

1. Within 20 days of the date of this Order, any person who wishes to nominate a candidate to fill the vacancy shall submit to the Commission in writing the candidate's name, address, and telephone number.
2. Any party filing documents with the Commission shall serve a copy of these documents upon all other parties.
3. Service of any document or pleading shall be made in accordance with 807 KAR 5:001, Section 4(8).
4. The Executive Director shall serve a copy of this Order upon the Adair County Judge/Executive, the members of the Adair County Fiscal Court, and the Adair County Attorney, as well as the Adair County District Board of Commissioners.

By the Commission



ATTEST:

  
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Executive Director

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